

(i) Communicate with the adult day health care staff if the participant is unable to attend the adult day health care program.

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.80 Enrollment, transfer and discharge rights.**

(a) Participants in the adult day health care program must meet the provisions of this part that apply to participants and—

(1) Must meet at least two of the following indicators:

(i) Dependence in two or more activities of daily living (ADLs).

(ii) Dependence in three or more instrumental activities of daily living (IADLs).

(iii) Advanced age, i.e., 75 years old or over.

(iv) High use of medical services, i.e., three or more hospitalizations in past 12 months; or 12 or more hospitalizations, outpatient clinic visits; or emergency evaluation unit visits, in the past 12 months.

(v) Diagnosis of clinical depression.

(vi) Recent discharge from nursing home or hospital.

(vii) Significant cognitive impairment, particularly when characterized by multiple behavior problems;

(2) Must have a supportive living arrangement sufficient to meet their health care needs when not participating in the adult day health care program; and

(3) Must be able to benefit from the adult day health care program.

(b) *Transfer and discharge.* (1) *Definition.* Transfer and discharge includes movement of a participant to a program outside of the adult day health care program whether or not that program or facility is in the same physical plant.

(2) *Transfer and discharge requirements.* All participants' preparedness for discharge from adult day health care must be a part of a comprehensive care plan. The possible reasons for discharge must be discussed with the participant and family members at the time of intake screening. Program management must permit each partici-

pant to remain in the program, and not transfer or discharge the participant from the program unless—

(i) The transfer or discharge is necessary for the participant's welfare and the participant's needs cannot be met in the adult day health care setting;

(ii) The transfer or discharge is appropriate because the participant's health has improved sufficiently so the participant no longer needs the services provided in the adult day health care setting;

(iii) The safety of individuals in the program is endangered;

(iv) The health of individuals in the program would otherwise be endangered;

(v) The participant has failed, after reasonable and appropriate notice, to pay for participation in the adult day health care program; or

(vi) The adult day health care program ceases to operate.

(3) *Documentation.* When the facility transfers or discharges a participant under any of the circumstances specified in paragraphs (b)(2)(i) through (vi) of this section, the primary physician must document the reason for such action in the participant's clinical record.

(4) *Notice before transfer.* Before a facility transfers or discharges a participant, the program management must—

(i) Notify the participant and a family member or legal representative of the participant of the transfer or discharge and the reasons for the move in writing and in a language and manner they can understand;

(ii) Record the reasons in the participant's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(6) of this section.

(5) *Timing of the notice.* (i) The notice of transfer or discharge required under paragraph (b)(4) of this section must be made by program management at least 30 days before the participant is transferred or discharged, except when specified in paragraph (b)(5)(ii) of this section.

(ii) Notice may be made as soon as practicable before transfer or discharge when—

(A) The safety of individuals in the program would be endangered;

## Department of Veterans Affairs

## § 52.90

(B) The health of individuals in the program would be otherwise endangered;

(C) The participant's health improves sufficiently so the participant no longer needs the services provided by the adult day health care program;

(D) The resident's needs cannot be met in the adult day health care program.

(6) *Contents of the notice.* The written notice specified in paragraph (b)(4) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the participant is transferred or discharged, if any;

(iv) A statement that the participant has the right to appeal the action to the State official responsible for the oversight of State Veterans Home programs; and

(v) The name, address and telephone number of the State long-term care ombudsman.

(7) *Orientation for transfer or discharge.* The program management must provide sufficient preparation and orientation to participants to ensure safe and orderly transfer or discharge from the program.

(c) *Equal access to quality care.* The program management must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of source of payment.

(d) *Enrollment policy.* The program management must not require a third party guarantee of payment to the program as a condition of enrollment or expedited enrollment, or continued enrollment in the program. However, program management may require a participant or an individual who has legal access to a participant's income or resources to pay for program care from the participant's income or resources, when available.

(e) *Hours of operation.* Each adult day health care program must provide at least 8 hours of operation five days a week. The hours of operation must be

flexible and responsive to caregiver needs.

(f) *Caregiver support.* The adult day health care program must develop a Caregiver Program which offers mutual support, information and education.

(Authority: 38 U.S.C. 101, 501, 1741-1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.)

### § 52.90 Participant behavior and program practices.

(a) *Restraints.* (1) The participant has a right to be free from any chemical or physical restraints imposed for purposes of discipline or convenience. When a restraint is applied or used, the purpose of the restraint is reviewed and is justified as a therapeutic intervention and documented in the participant's clinical record.

(i) Chemical restraint is the inappropriate use of a sedating psychotropic drug to manage or control behavior.

(ii) Physical restraint is any method of physically restricting a person's freedom of movement, physical activity or normal access to his or her body.

(2) The program management uses a system to achieve a restraint-free environment.

(3) The program management collects data about the use of restraints.

(4) When alternatives to the use of restraint are ineffective, restraint is safely and appropriately used.

(b) *Abuse.* (1) The participant has the right to be free from mental, physical, sexual, and verbal abuse or neglect, corporal punishment, and involuntary seclusion.

(i) Mental abuse includes humiliation, harassment, and threats of punishment or deprivation.

(ii) Physical abuse includes hitting, slapping, pinching, kicking or controlling behavior through corporal punishment.

(iii) Sexual abuse includes sexual harassment, sexual coercion, and sexual assault.

(iv) Neglect is any impaired quality of life for an individual because of the absence of minimal services or resources to meet basic needs. Neglect may include withholding or inadequately providing food and hydration,